

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

AN INQUIRY INTO LOCAL RESALE)	ADMINISTRATIVE
OF EXCHANGE SERVICES BY STS)	CASE NO.
PROVIDERS AND COCOT PROVIDERS)	293

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O R D E R

On March 18, 1985, Cincinnati Bell Telephone Company filed a proposed Shared Tenant Service ("STS") tariff for consideration in its Kentucky jurisdiction. On March 27, 1985, the Kentucky Public Service Commission ("Commission") suspended the proposed tariff pending a generic investigation into the impact of resale of local service.

On June 4, 1985, the Commission issued an Order establishing this case. All local exchange carriers ("LECs") under the jurisdiction of the Commission were made parties to the case and were ordered to prefile testimony addressing the issues as delineated in the Order.

Motions to intervene were filed by the Attorney General's Office ("AG"), ShareTech, Interconnect Telecommunications Systems, Inc., ("ITS"); Coin-Tel, Inc., ("Coin-Tel"); Treyton Oak Tower ("Treyton Oak"); and Capital Tel Systems, Inc. ("Capital"). None of the intervening parties sponsored prefiled testimony; however, ITS and Coin-Tel filed statements of their position on resale of local services prior to the Commission hearings.

Public hearings were conducted at the Commission's offices in Frankfort, Kentucky, on August 13 and 14, 1985, for the purposes of cross-examining witnesses.

Witnesses appearing for the LECs were as follows:

South Central Bell:

Joan D. Mezzell, Operations Manager-General
Rates and Economics Administration

The Independent Telephone Group:¹

William Magruder, General Manager-Duo County
Telephone Cooperative

Cincinnati Bell Telephone Company:

Steven Kritzer, Staff Manager - Exchange Services
and Revenue Studies

Continental Telephone Company:

O. Douglas Fulp, Manager-Revenue Requirements
and Pricing

General Telephone Company of Kentucky:

Alan Banzer, Pricing and Tariffs Manager

Alltel Corporation of Kentucky:

Jan Teensma, President

On January 31, 1986, AmeriCall filed comments in this proceeding. On February 27, 1986, Cincinnati Bell filed a response

¹ Ballard Rural Telephone Cooperative Corporation, Inc., Duo County Telephone Cooperative Corporation, Inc., Foothills Rural Telephone Cooperative, Harold Telephone Company, Inc., Highland Telephone Cooperative, Inc., Leslie County Telephone Company, Lewisport Telephone Company, Inc., Logan Telephone Cooperative, Inc., Mt. Rural Telephone Cooperative Corporation, Inc., North Central Telephone Cooperative Corporation, Inc., Peoples Rural Telephone Cooperative Corporation, Salem Telephone Company, South Central Rural Telephone Cooperative, Thacker-Grigsby Telephone Company, West Kentucky Rural Telephone Cooperative.

to the AmeriCall letter. The AmeriCall comments were for the most part directed toward the illustrative tariff filed in Ms. Mezzell's prefiled testimony by South Central Bell. In determining whether to permit AmeriCall leave to file its comments the Commission has considered the timeliness of the comments. At present this proceeding has been ongoing for 8 months, the case was submitted at the close of the hearings held August 13 and 14, 1985, for several months and AmeriCall is only now filing its comments. Should the Commission accept the comments of AmeriCall, other parties would have to be given the opportunity to respond to any new issues raised by the comments. Therefore, because of the untimely filing the Commission will not accept AmeriCall's comments.

All briefs and information requested during the hearings have been filed.

INTRODUCTION

This case was instituted primarily in response to technological, structural, and regulatory changes occurring at both the state and national level in the telecommunications industry. Shared Tenant Service ("STS") is a telecommunication arrangement which permits unrelated tenants in a limited geographic area to share the features of a Private Branch Exchange ("PBX") and local access lines. Customer-Owned Coin Operated Telephones ("COCOTs") are privately-owned and provided pay telephone instruments available for use by the public to access the local telephone network. Each of these services is an example of technological advances

that have resulted in products which may be attractive substitutes for established LEC products and services offerings.

Historically, the provision of local telephone service has been restricted to the local franchised monopoly provider. It was assumed that local telephone service was a natural monopoly and that the economically rational response of regulatory commissions was to encourage and to protect this monopoly offering for the benefit of all consumers. However, technological development of the PBX and other Customer Premises Equipment ("CPE") has called into question both the desirability and the feasibility of continuing to enforce this strictly monopoly offering. New services, more efficient use of facilities, lower rates and greater selection of providers have all been offered as justification for the relaxation of regulation and the insertion of competition into the provision of telephone service.

Though these justifications for local competition have been offered, there remain a number of concerns. These concerns range from the impact of competition on universal service to its implications for the telephone industry's long-range construction planning and the legal status of local competition. The balancing of these concerns against the benefits of local exchange resale has been the primary consideration of the Commission in this proceeding.

The participants in this proceeding have taken conflicting stands on the issue of local resale and the sub-issues embedded in that service. The positions range from full endorsement of STS and COCOT service as exhibited by ShareTech, Coin-Tel and ITS

to that of the Independent Group and the AG of absolute opposition to resale. South Central Bell, Cincinnati Bell, Continental and General have supported the provision of the service but only on the condition that the LECs are able to price and structure their tariffs to recognize competition and resale.

Whether STS Providers are Public Utilities

The fundamental issue underlying the Commission's regulatory treatment of STS and COCOT vendors is whether their services are that of a public utility as defined in KRS 278.010 or that of an end-use consumer.

KRS 278.010(3)(e) provides, in relevant part:

"Utility" means any person except a city, who owns, controls or operates or manages any facility used or to be used for or in connection with. . .the transmission or conveyance over wire, in air or otherwise, of any message by telephone or telegraph for the public, for compensation.

Thus, a two-pronged test applies: Is the service "for the public?" Is the service "for compensation?" With the exception of ShareTech, there was virtual consensus that STS arrangements are "for compensation."² The more controversial aspect of this issue revolved around whether STS was "for the public."

Cincinnati Bell, South Central Bell and Continental contend that "STS is merely local service purchased by STS providers for resale to their customers."³ South Central Bell, Continental

² Some parties considered this prong to the test as immaterial since they considered that both prongs to the test must be met and they took the position that STS was not "for the public."

³ Prefiled testimony of Steven Kritzer, page 2.

and General go on to contend that an "STS provider would not be classified as a 'public utility' because the service would only be available to those end-users located within a specific geographical location where STS has been requested by a fellow tenant and not to the general public."⁴ In each case, because of the tariff restriction placed on the services provided by the STS vendor, South Central Bell, Cincinnati Bell, and Continental conclude that the STS vendor does not provide local service and thus does not violate their local franchise rights.

Alltel and the Independent Group are in fundamental disagreement with the other LECs on the classification of STS vendors as public utilities. Alltel contends that "the provision of STS to a defined segment of the public, such as that occupying a particular building, subdivision, business district, city, etc., clearly constitutes the provision of local exchange service to the members of the group" and thus the "STS provider is a public utility."⁵ The Independent Group asserts that only under the condition that STS vendors, "were providing service only for one particular entity and not for a group of tenants or the general public or if it were providing service free of charge and not for compensation,"⁶ would the vendor not be classified a public utility. The Independent Group also stated that STS was a utility meeting the test of "for the public" since "any member of

⁴ Prefiled testimony of O. Douglas Fulp, II, page 4.

⁵ Comments of Alltel Kentucky, Inc., page 1.

⁶ Prefiled testimony of William W. Magruder, page 5.

the public who would occupy a building being served by an STS provider would be available as an STS customer (subscriber)."⁷

The AG's position is that even in an instance involving a small number of persons or entities, such service may constitute provision of public utility services, citing North Carolina ex rel Utilities Commission v. Simpson, N.C., 246 S.E.2d 753 (1978). In the Simpson case, the North Carolina Supreme Court determined that a group of 10 physicians operating a two-way radio service constituted a public utility, despite the small number of subscribers involved. Thus, in virtually every configuration Alltel, the AG and the Independent Group would contend that the STS vendor is a public utility and that absent a sufficient showing of service inadequacy,⁸ the provision of this service would violate the LECs' local monopoly franchise.

There is no Kentucky case law directly on point, given the circumstances confronting the Commission in this case.⁹ The Commission agrees with the parties that the STS services are "for

⁷ Independent Group Memorandum Brief, pages 1-2.

⁸ AG Memorandum Brief, page 2, citing Kentucky Utilities Co. v. PSC, Ky., 252 S.W.2d 885, 890 (1952).

⁹ Austin v. City of Louisa, Ky., 264 S.W.2d 662 (1954), has been cited for the proposition that STS is not a utility. However, that case is clearly distinguishable. First, the Commission did not participate in the case. Second, the case was litigated in Lawrence Circuit Court. Third, the issue in the Austin case centered around a small group of people sharing the cost of constructing a line to tap-in and become customers of a municipal water system. The Commission has no jurisdiction over municipally-owned water systems. Fourth, the case was decided on the basis of "for compensation" and thus, did not address the issue of "for the public."

compensation."¹⁰ Therefore, attention is focused upon whether STS is offered "for the public." The Commission does not agree with the premise that an entity must hold itself out to any and all would-be subscribers within the Commonwealth or within a given local exchange telephone company's service territory in order to be considered a utility offering service to the public. The Simpson case previously cited supports this view.¹¹ Additionally, the D.C. Circuit has held that a carrier need not offer its services to the entire public in order to come under the regulatory jurisdiction of the FCC.¹² That court stated that the FCC could regulate those entities even "though the nature of the service is sufficiently specialized as to be of possible use to only a fraction of the total population."¹³ The Commission is of the opinion that it is the type and scope of service offered which determines whether a particular entity is operating as a public utility. The Commission in granting franchise territories

¹⁰ Although ShareTech did not agree, the authority for its position has been previously distinguished. (See footnote 9.)

¹¹ ShareTech's citation of the Simpson case in its behalf further underscores the circularity of reasoning used to attempt to avoid public utility status. Sharetech argues that the 10 physicians in Simpson represented 45% of the market and thus, should be regulated as a public utility. This only shifts the emphasis to defining a "market" as opposed to defining the "public." In any event, there is no evidence in this proceeding to suggest that STS providers would not offer to serve all tenants in a building or location, or 100% of that "public" or "market."

¹² National Assn. of Regulatory Utility Commissions v. F.C.C., 525 F.2d 630, 641 (D.C. Cir. 1976).

¹³ Id., at 641.

has traditionally placed geographic restrictions on where the public utility can offer service. Accordingly, the Commission rejects the arguments that limitation of the offering, whether geographic or numerical, limits the capacity of an STS vendor to perform services as a public utility. Therefore for all the reasons stated above, in the opinion of the Commission, STS vendors should be considered public utilities.

Our conclusion that STS providers are public utilities will allow the Commission to pursue certain important policy goals as STS expands in Kentucky.

- o First, the Commission can monitor the impact of STS providers upon local exchange carrier planning and revenues.
- o Second, the Commission can assure access to the local exchange carrier, should a tenant choose its service rather than the STS provider's.
- o Third, the Commission's review of an STS provider's application should eliminate certain anti-competitive concerns and minimize disputes regarding applications for STS services.
- o Fourth, the Commission will be in a better position to monitor and control bypass of the local exchange carrier by STS providers.

Considerable concern was expressed by the LECs as to whether the authorization of STS by the Commission would violate the LECs' franchise right. The strongest position adopted on the issue was by Alltel. Alltel in response to the Commission's Order stated:

The provision of STS to a defined segment of the public, such as that occupying a particular building, subdivision, business district, city, etc. clearly constitutes the provisions of local exchange service to the members of the group. Therefore, an STS provider is a public utility. As such it must comply with the provisions of KRS 278.020 and obtain a certificate of convenience and necessity ("CCN"). To obtain a CCN an STS provider must establish that for the service it seeks to provide there is substantial inadequacy in the existing service and the inadequacy must be due either to a substantial deficiency of service facilities or the inability or unwillingness of the existing local exchange telephone company to render adequate service. Kentucky Util. Co. v. PSC, 252 S.W. 2d 885, 890 (KY. 1952).¹⁴

Thus, Alltel contends that the STS provider would be a franchised provider in the area defined in the STS provider's certificate of convenience and necessity and the LEC would not have provider-of-last-resort responsibilities.

Cincinnati Bell and South Central Bell contended that authorization of STS should not constitute a violation of the local exchange franchise. Under their position, all LECs would be permitted access to any tenant in the STS facility if so requested. Cincinnati Bell stated, "These carriers [LECs] would continue as providers of last resort."¹⁵ Therefore the same rights and privileges and obligations currently applicable to the LECs would continue.

The authorization of limited competition within the local exchange is an important step by this Commission. The Commission fully recognizes the concerns expressed by Alltel; however, it

¹⁴ Comments of Alltel of Kentucky, Inc., pages 1 and 2.

¹⁵ Prefiled testimony of Steven Kritzer, page 2.

does not agree that the authorization of resale violates the LEC franchise. In Adm. Case No. 273,¹⁶ the Commission authorized toll competition. In that Order the Commission stated:

The standard for obtaining a certificate of public convenience and necessity requires a determination that a proposal is feasible and will not result in wasteful duplication. "Duplication" has been interpreted to encompass the concept of excessive investment in relation to productivity or efficiency. (Footnote omitted.)¹⁷

A similar standard should be met before the Commission authorizes STS providers within the LECs' franchise territories. The Commission recognizes that many of the services offered by the STS providers will duplicate some services offered by LECs. However, the STS providers will also provide services that are not currently offered by LECs and in some cases cannot be offered by an LEC.¹⁸ An example of such tenant service is least-cost routing for interexchange calling. The Commission is of the opinion that STS providers should be given the opportunity to compete with the LEC for the limited set of customers that may subscribe to STS service. The STS providers can offer certain unique services, and any duplication resulting from STS cannot be considered either wasteful or excessive. In permitting resale of local service through STS the Commission is not in any way restricting the rights of LECs to offer their services to any tenant within

¹⁶ An Inquiry into Inter- and Intralata Intrastate Competition in Toll and Related Services Markets in Kentucky.

¹⁷ Adm. Case No. 273, Order entered May 25, 1984, page 6.

¹⁸ U.S. v. AT&T, C.A. 82-0192, Opinion dated January 13, 1986, at 17.

an STS facility. The Commission concurs with South Central Bell and Cincinnati Bell that LECs will continue as providers of last resort in their franchise territories.

Whether COCOTS are Public Utilities

The AG, South Central Bell, Cincinnati Bell, General, Continental and the Independent Group are in substantial agreement that COCOT vendors are public utilities. These parties contended that the provision and availability of COCOT service to the general public or the public at large for compensation necessitates this classification. The position was clearly stated by South Central Bell's witness, Joan Mezzell, in her direct testimony, ". . . a COCOT provider would technically fall within the definition of a utility since the service is a public telephone service open to the public at large."¹⁹

Coin-Tel was the only participant in the proceeding that did not concur with the classification of COCOTs as public utilities. Coin-Tel alleged that the legislature did not foresee the development of this type of technology and had no intention of creating utilities of the owners of every "local neighborhood tavern." Further, in response to the Commission's Order, Coin-Tel stated, "The COCOT provider is not reselling any services. He is providing the use of an instrument as any other interconnect company." Coin-Tel contends that COCOTs should not be classified as public utilities since like other subscribers of regulated services, they supply only the telephone.

¹⁹ Prefiled testimony of Joan Mezzell, page 4.

The Commission in Case Nos. 9220²⁰ and 9223²¹ approved the COCOT tariffs for South Central Bell and Cincinnati Bell. The Commission at this point has had no complaints from the public concerning either COCOT service or its method of regulation. There has been a continuous expansion in the number of COCOTs with only a limited administrative burden on the telephone companies, COCOTs and the Commission. Though the Commission fully recognizes the concerns expressed by all parties, the Commission is of the opinion that the record is inadequate for supporting a change in its regulatory treatment of COCOTs at this time. Therefore, the Commission will continue to treat COCOTs as tariffed customers of the LECs.

Type of STS Regulation

The determination that STS providers are public utilities requires the Commission, in meeting its statutory obligations, to impose regulatory oversight. In this proceeding there was considerable disagreement about the level and extent of regulation deemed necessary to meet this burden. Allnet and the Independent Group assert that "the Commission should and legally must require STS providers to obtain a CCN [Certificate of Convenience and Necessity]." Furthermore, the Independent Group suggests "that STS providers whether they be for profit or not for profit,

²⁰ The Tariff Application of South Central Bell for Access Line Service for Customer-Provided Public Phones.

²¹ The Tariff Application of Cincinnati Bell Telephone Company to Establish Regulations, Rates and Charges for Measured Rate Coin Service for Use with Customer-Provided Public Phones.

provide the Commission with a schedule of rates and a cost justification for those rates." In addition, Alltel contends that "the Commission should place the same service requirements on STS providers as are placed on local exchange carriers." In summary, Allnet and the Independent Group contend, "STS providers should receive the same regulatory treatment as any other telephone company."²² Thus Allnet and the Independent Group would place the full gamut of regulatory requirements on the STS providers.

In contrast to this position General proposed that the Commission require each STS vendor "to obtain a certificate to operate." General recommended that the Commission in issuing its initial certificate would place the following limitation on the STS providers.

Limitations include a restriction to a customer's continuous property, a local exchange company being informed of a planned development size, scope and interconnecting requirements, and retaining the right of local access and to serve subscribers who may choose local telephone service over the available shared tenant service.²³

Under General's proposal, an LEC would be provided with an opportunity to comment on the resellers' application, including the right to oppose any application based on size and scope.²⁴ General concluded that "any regulation imposed by the Commission

²² Comments of Alltel Kentucky, Inc., page 3.

²³ Prefiled testimony of Alfred A. Banzer, page 8.

²⁴ Ibid., page 5.

should be minimal"²⁵ and that competition should be relied on to ensure adequate service.

In determining the level of regulation to be applied to STS service the Commission must consider whether the public interest is served by applying differential regulatory treatment to these carriers. In Administrative Case No. 273, the Commission adopted a dominant/non-dominant carrier classification. The Commission determined: "If market power is not wielded by a carrier, there is no justification for full conventional regulation." In this proceeding the Commission has reaffirmed the right of the LECs to serve tenants in those STS facilities which request service from them in lieu of service by the STS provider. Furthermore, the Commission recognizes that the STS provider is limited in its ability to extract monopoly profits from tenants in the long run since a dissatisfied tenant has the option of moving to another location within the LEC service area. Therefore, the Commission concludes that the STS provider does not have market power necessary for it to apply the entire regulatory framework to STS providers.

It is the policy of this Commission to provide an opportunity for new and advanced communications technologies to develop in the Commonwealth. The Commission believes that adopting full regulation of STS services just as these services are beginning to be offered in Kentucky could stifle the development of these services. Therefore, the Commission rejects

²⁵ Ibid., page 9.

the proposal of Alltel and the Independent Group for full regulation.

In this proceeding General has proposed that the Commission establish limited regulation of STS providers and rely on competition as the primary market regulator. The Commission has previously concluded that the STS providers have only limited market power, and are therefore subject to market constraints. Accordingly, the Commission will adopt limited regulatory oversight by treating STS providers as non-dominant carriers. The Commission will specify the service, reporting, and rate-filing requirements in later sections of this Order.

Measured Rates

South Central Bell, Continental, Cincinnati Bell, and General have proposed to offer STS and COCOT services in those areas where measured service is available. These parties contend that measured service is a proper rate structure for pricing these services because they are offerings that compete with the LEC local telephone service. Furthermore, the LECs contend that, in wire centers where STS services are offered, a number of complications will result. The LECs contend that the authorization of STS will result in stranded plant, higher average usage on STS trunks, reduced trunking requirements, loss of revenue, and increased construction planning difficulties. Cincinnati Bell witness Mr. Kritzer summarized the LEC position by stating: "A

measured rate structure would better compensate the local exchange carrier for the increased costs of STS."²⁶

ShareTech, Coin-Tel, and ITS opposed the adoption of measured service for STS and COCOT services. ShareTech in its brief indicated that it was not opposed to measured service per se but instead was opposed to treating STS vendors differently from other PBX users. ShareTech stated: "The equipment used in an STS arrangement is physically indistinguishable from PBX equipment now used by many business customers in Kentucky. . . ."²⁷ Thus application of measured rates, according to ShareTech, would constitute rate discrimination. Instead, ShareTech recommended that the Commission adopt the current PBX flat-rate structure until the Commission makes its final determination in Administrative Case No. 285.²⁸

The Commission is concerned with developing an appropriate rate structure for both the resale and retail service market. The LECs have documented a number of problems that have occurred with the introduction of both STS and COCOT vendors. However, no persuasive evidence has been offered to support the conclusion that STS vendors would be different in either their usage characteristics or trunk demand from other PBX users. Furthermore, the introduction of STS may have a favorable impact on future LEC

²⁶ Prefiled testimony of Steven Kritzer, page 5.

²⁷ ShareTech Brief, page 2.

²⁸ An Investigation into the Economic Feasibility of Providing Local Measured Service Telephone Rates in Kentucky.

costs. The construction of STS facilities may well reduce administrative expenses and may decrease new plant investment. We see no reason to treat this group of PBX users differently from other PBX users in terms of cost structure.

The Commission is currently proceeding with Administrative Case No. 285 to evaluate the costs and benefits of adopting measured service. While Ms. Mezzell, South Central Bell, testified that the adoption of flat rates for STS and COCOTs on an interim basis would lead to uncertainty on STS and COCOTs' part; the Commission does not agree. ShareTech and Coin-Tel have indicated that they should be treated as other end-use customers and the application of measured service rates should occur only if it is a proper rate structure for other similar consumers. Therefore, the Commission will not adopt measured service rates for STS consumers but, instead, will apply the current PBX tariff pending the outcome of Administrative Case No. 285.

As to COCOT service the Commission in Case No. 9220 and Case No. 9223 authorized measured service for COCOT tariffs offered by South Central Bell and Cincinnati Bell. In this proceeding the Commission reopened the issue of measured service for COCOT service. Neither South Central Bell nor Cincinnati Bell provided cost evidence to support measured service. Therefore the Commission will reject measured service rates for COCOT service and will adopt either flat business rates or message rate service, as available in serving LEC exchanges, at the option of the COCOT vendor pending the outcome of Administrative Case No. 285. Furthermore the Commission will require South Central Bell

and Cincinnati Bell to refile their COCOT tariffs to reflect the above changes within 30 days of the date of this Order.

Tariff Filing Requirements

The Commission in its Order establishing this case raised the issue of whether all LECs should be required to file STS and COCOT tariffs. Coin-Tel and Alltel contended that the Commission should require all LECs to file COCOT tariffs. In support of this position Alltel stated: "COCOT providers have a right to connect to the local exchange for the purpose of providing interstate service regardless of the decision of this Commission."²⁹ Coin-Tel further contends that requiring approved tariffs will result in LECs having "increased revenue" and "the public will have more access to the network."³⁰

General, Continental, and the Independent Group were opposed to requiring all LECs to file COCOT tariffs. General and Continental contended that "the filing of tariff pages for COCOT services would be an administrative burden for all parties involved."³¹ The Independent Group was more adamant in its opposition to COCOT tariffs. Mr. Magruder argued that COCOTs would be located only "where pay station [coin telephone] service is [financially] lucrative." The Independent Group also contends that "any change in the current nature of public pay phone

²⁹ Comments of Alltel Kentucky, Inc., page 10.

³⁰ Comments of Coin-Tel, page 5.

³¹ Prefiled Testimony of O. Douglas Fulp II, page 13.

provision could reduce access to the local network for the traveling public throughout the Commonwealth of Kentucky."³²

The Commission is concerned with the development of the COCOT industry in Kentucky. The Commission recognizes the Independent Group's position that the potential for "cream skimming" exists. However, the Commission also recognizes that, depending on the COCOT's cost structure, introduction of COCOT may result in an expansion in coin telephone service for the public. The evidence as to the impact of COCOT is conjectural at best. As to Alltel's contention that the FCC requires LECs to provide COCOT access to the local network, the Commission concurs. Accordingly, the Commission will require all LECs to provide COCOT tariffs within 90 days of the date of this Order. The Commission encourages cooperation among the LECs in order to minimize the administrative burden of these tariffs. Furthermore the Commission will monitor the impact of COCOTs on LEC coin telephone revenue and the level of coin telephone service offered to the public.

The positions adopted by the participants with respect to the requirement that all LECs file an STS tariff differ only slightly from the positions relating to COCOT tariff. ITS was the only participant to take the position that LECs should be required to file STS tariffs. In support of its position ITS stated: "If STS was available only in certain areas, the

³² Prefiled testimony of William W. Magruder, pages 13 and 14.

economic development, business opportunities, and benefits of STS unfairly would be available only in certain areas of Kentucky."³³

Continental, General, Alltel and the Independent Group opposed requiring LEC filing of STS tariffs. Continental and General's positions were similar to their COCOT positions in that the tariff should be filed only on demand. Alltel went further in opposition by contending, "The ability of STS providers to legally operate under Kentucky law has not been demonstrated."³⁴ Therefore, in Alltel's opinion, the filing of STS tariffs should not be required. Finally, the Independent Group urged the Commission to allow STS "only in areas where local measured service is available" and then "allow but not require the LEC to provide STS tariffs."³⁵

The Commission, in considering whether it should require each LEC to file an STS tariff, has determined that such filing will lead to a consistent statewide policy on local resale. Though Continental and General contend that it will be an administrative burden, the Commission is of the opinion that this objection can be at least partially dispensed with by permitting the smaller LECs to cooperate in the development of an STS tariff, and providing an additional month to file the STS tariff. Furthermore, objections of Alltel and the Independent Group have either been discussed in other sections of this Order or are

³³ Comments of ITS, page 17.

³⁴ Comments of Alltel Kentucky, Inc., page 10.

³⁵ Prefiled testimony of William W. Magruder, page 13.

without merit. The Commission concurs with ITS that the potential benefits of STS should be available throughout the state. Therefore, the Commission will require all LECs to file an STS tariff within 90 days of the issuance of this Order.

Rates and Tariffs

Introduction

The Commission has two proposed STS tariffs before it in this case. South Central Bell filed a proposed STS tariff as Exhibit 1 attached to the testimony of its witness Joan D. Mezzell. In another case,³⁶ Cincinnati Bell filed a proposed STS tariff, which was suspended and later rejected without prejudice,³⁷ since issues related to the tariff filing were pending decision in this case. Although not formally incorporated into this case, the prefiled testimony of Cincinnati Bell's witness, Steven L. Kritzer, and the Transcript of Evidence in this case make numerous references to the tariff. Therefore, both South Central Bell's and Cincinnati Bell's STS tariffs will be discussed in this Order.

In general, South Central Bell's proposed STS tariff represents a more complete model and raises more issues than does Cincinnati Bell's tariff. Therefore, discussion of rate design

³⁶ Case No. 9305, The Tariff Application of Cincinnati Bell Telephone Company to Extend Resale and Sharing Privileges to Local Exchange Services.

³⁷ The tariff filing was dismissed on January 2, 1986. Subsequently, on January 20, 1986, Cincinnati Bell refiled the same STS tariff, which was suspended and assigned Case No. 9501, Cincinnati Bell Telephone's Tariff Proposal Providing for the Resale and Sharing of Local Exchange Service.

and tariff issues will tend to focus more on South Central Bell's tariff than Cincinnati Bell's tariff.

Neither South Central Bell's nor Cincinnati Bell's proposed STS tariff will be approved as filed in this case. Both tariffs require revisions to conform with the guidelines discussed in this Order. Also, any other STS tariffs filed by other LECs in the future must conform with the same guidelines.

South Central Bell's and Cincinnati Bell's COCOT tariffs were approved in other cases.³⁸ In the relevant Orders, however, the Commission advised South Central Bell and Cincinnati Bell that changes might be required as the result of further proceedings. As a result of this generic proceeding, certain COCOT tariff changes will be required.

Directory Errors and Omissions

SCB's proposed STS tariff includes provisions limiting its liability for damages arising from errors in or omissions of listings in its directories or directory assistance records.³⁹ Cincinnati Bell's tariff does not include a similar provision.

In Administrative Case No. 222, the Revision of Telephone Utility Tariffs Limiting Liability for Directory Listing Errors and Omissions, the Commission stated its position that "the courts provide the proper forum for customers' and advertisers' claims for damages as a result of directory listing errors and

³⁸ Case No. 9220, South Central Bell, and Case No. 9223, Cincinnati Bell.

³⁹ General Subscriber Services Tariff, Section A2, page 39 (paragraph A.2.5.9).

omissions"⁴⁰ and ordered that limitation of liability provisions be deleted from LEC tariffs. In the opinion of the Commission, the Order in Administrative Case No. 222 is applicable to South Central Bell's proposed limitation of liability in this case, and the limitation should not be allowed.

STS Sharing and Resale

South Central Bell's proposed STS tariff states the following concerning STS sharing and resale: "For the purpose of this tariff section, 'sharing' of basic local exchange service is considered synonymous with 'resale' of basic local exchange service."⁴¹

Unlike South Central Bell's tariff, Cincinnati Bell's proposed STS tariff attempts to distinguish between STS sharing and STS resale.⁴²

In the opinion of the Commission all STS should be considered resale of local exchange service. Any attempt by LECs to distinguish between sharing and resale is impractical and essentially irrelevant to STS.

STS Applications for Service

South Central Bell's proposed STS tariff states the following relative to STS applications for service:

⁴⁰ Administrative Case No. 222, Order dated July 2, 1980, page 1.

⁴¹ General Subscriber Services Tariff, Section A27, page 1 (paragraph A27.1.1.A).

⁴² General Exchange Tariff, Section 2, page 5.1 (paragraphs C.1.b.1.i-C.1.b.1.ii).

When in the opinion of the Company, it is deemed necessary, or when the projected number of clients is five or more, the customer must apply in writing to resell exchange services provided by the Company. When in the judgement of the Company it is deemed necessary, or when the projected number of clients is five or more, the reseller may be required to submit layout maps defining the intended geographic resale area and anticipated development plan in terms of new or existing buildings.⁴³

Cincinnati Bell's tariff does not include a similar provision.

All STS applications should be made in writing, either in the form of an ordinary business service application or in the form of an STS-tailored application. At a minimum, the Commission assumes that LECs would require identification of an STS point of contact and a brief description of the STS area in STS applications. In addition, it appears to the Commission that some flexibility to require additional information such as layout maps should be allowed. However, this flexibility is not intended to impede the development of STS and the Commission's complaint review process will serve to monitor unreasonable LEC requests for information from STS applicants.

As part of its STS application requirements, South Central Bell uses a 'five or more clients' rule as a threshold that is apparently intended to trigger a requirement for additional information from STS applicants. Although Ms. Mezzell relates the 'five or more clients' rule to South Central Bell's joint

⁴³ General Subscriber Services Tariff, Section A27, page 1 (paragraph A27.1.1.B). The underlined text indicates language that should be deleted from the tariff.

user tariff, neither South Central Bell's nor Cincinnati Bell's joint user tariffs include any reference to thresholds, either in terms of the minimum or maximum numbers of entities that might share in joint user service, or in terms of information requirements. Therefore, in lieu of tariffed thresholds, each LEC should develop written standard management practices as a means of avoiding any arbitrary treatment of any individual STS applicant.

STS Provider's Responsibilities and Points of Contact

South Central Bell's proposed STS tariff states the following concerning the STS provider's responsibilities and points of contact:

All rates and charges in connection with the resale operation and all repairs and rearrangements behind and including the reseller's communication system will be the responsibility of the reseller (customer of record)/owner. The reseller will be the single point of contact for all shared tenant services provided in the resale service area.⁴⁴

In South Central Bell's tariff, the STS provider is responsible for applicable rates and charges, repairs and rearrangements behind and including the STS switch, and is the sole customer of record. In Cincinnati Bell's tariff, the STS provider is also responsible for applicable rates and charges, and is the point of contact for service orders. However, Cincinnati Bell indicates that it would respond to requests for repairs and maintenance from STS clients, provided that the STS

⁴⁴ Ibid.

provider is responsible for any maintenance of service charges that might apply.⁴⁵

In the opinion of the Commission, STS providers should be responsible for applicable LEC rates and charges, repairs and rearrangements behind and including the STS switch, and should be the customer of record and sole point of contact with the serving LEC. Repair and maintenance service should not be provided directly to STS clients unless an LEC has obtained prior approval or waiver from the STS provider.

Availability of Facilities

South Central Bell's proposed STS tariff allows STS subject to the availability of facilities.⁴⁶ Cincinnati Bell's tariff does not include a facilities limitation.

In general, all telecommunications services offered to the public by an LEC are subject to the availability of facilities. Therefore, in the opinion of the Commission, a facilities limitation in the case of STS is reasonable and should be allowed. As in the case of unreasonable LEC requests for information from STS applicants, the Commission's complaint review process will serve to monitor LEC denials of service which are erroneously based on a lack of facilities.

STS Premises

South Central Bell's proposed STS tariff states that:

⁴⁵ General Exchange Tariff, Section 2, page 5.1 (paragraphs C.1.b.1.iii-C.1.b.1.iv).

⁴⁶ General Subscriber Services Tariff, Section A27, page 1 (paragraph A27.1.1.C).

Resale is permitted where facilities permit and within the confines of specifically identified continuous property areas under the control of a single owner. Areas designated for resale may be intersected or transversed by public thoroughfares provided that the adjacent property segments created by intersecting or transversing thoroughfares would be continuous in the absence of the thoroughfare. The designated resale service area must be wholly within the confines of existing exchange boundaries.⁴⁷

More specifically, South Central Bell defines an STS premises as follows:

In connection with resale and sharing of basic local exchange service, "premises" is interpreted to mean the resale area as defined by layout maps, if required, and may be intersected by public thoroughfares provided that the property segments created would be continuous in the absence of the thoroughfares.⁴⁸

Cincinnati Bell defines an STS premises in terms of a Multiline Terminating System Area:

A Multiline Terminating System Area is all of the premises within a building or all of the premises on continuous property containing more than one building, that are owned by one person, corporation or entity. For purposes of the definition of Multiline Terminating System Area and notwithstanding any other definition of continuous property, continuous property is the plot of ground, together with any buildings thereon, that is not separated by public highways or property owned by others. For purposes of the definition of Multiline Terminating System Area, the Telephone Company's customer is the person, corporation or entity or authorized agent thereof, purchasing Telephone

⁴⁷ Ibid. The underlined text indicates language that should be modified in the tariff.

⁴⁸ Ibid., Section A1, page 13.

Company basic exchange service and/or equipment and reselling, sharing or arranging for others to share in service.⁴⁹

The key difference between South Central Bell's and Cincinnati Bell's definitions of STS premises centers on the concept of continuous property. Under both tariffs an STS premises must be continuous. Also, under both tariffs, continuous property is property that is owned by some single entity and that is not separated by property owned by others. However, in the case of South Central Bell property intersected by a public thoroughfare can be considered continuous property if it would be continuous property in the absence of a public thoroughfare. In the case of Cincinnati Bell, property intersected by a public thoroughfare cannot be considered continuous property.

Both ShareTech and ITS raise various objections to South Central Bell's and Cincinnati Bell's definitions of an STS premises.

In its brief, ShareTech states that South Central Bell's and Cincinnati Bell's geographic and ownership restrictions "are overly burdensome and unduly restrictive".⁵⁰ However, ShareTech does recognize that "some definition of system size may be necessary to prevent STS being offered 'to the public' and thus

⁴⁹ General Exchange Tariff, Section 1, page 10. The underlined text indicates language that should be modified in the tariff.

⁵⁰ ShareTech Brief, page 7.

operating as an uncertificated utility."⁵¹ ITS' brief echoes ShareTech's on the issue of ownership restrictions.⁵²

Neither South Central Bell's nor Cincinnati Bell's briefs directly address these issues.

In the opinion of the Commission, some geographic and ownership restrictions should apply to the definition of an STS premises and the cornerstone of the definition should be the concept of continuous property. Continuous property should be construed to mean property under common ownership or management that is not separated by property owned or managed by others. Common ownership should be construed to mean an individual owner, or ownership in the form of a corporation, joint venture, or partnership. Common management should be construed to mean an entity responsible for property as well as communications management. Furthermore, continuous property may be intersected by public thoroughfares, railroads, and other public and private rights of way, provided that the property would be continuous in the absence of such intersections. Also, continuous property may straddle exchange boundaries of an LEC. In such cases, the LEC should select the most economic serving exchange.⁵³

This concept of continuous property will permit STS in a wide variety of circumstances, including multi-tenant buildings,

⁵¹ Ibid., page 8.

⁵² ITS Brief, pages 3-4.

⁵³ In this opinion the Commission substantially concurs with the recommendations made by ShareTech and ITS. See ShareTech Brief, pages 8-9, and ITS Brief, pages 3-4.

whether residential, business, or mixed use in nature, apartment and condominium complexes, commercial malls, campus complexes, such as colleges and universities, and office and industrial parks. In each of these cases, common ownership or management may exist. Moreover, each of these potential STS cases is consistent with examples given in the testimony of Ms. Mezzell.⁵⁴ STS would not be permitted in these cases if no common ownership or management exists. Neither would it be permitted in any other residential, commercial, or industrial circumstance where no common ownership or management exists, such as residential subdivisions, downtown business districts as a whole, and areas zoned for generalized commercial or industrial use.

Resale of Private Line Services

South Central Bell's proposed STS tariff prohibits the resale of private line services through STS providers. Individual STS clients would be permitted to obtain private line services. The tariff is less clear as to whether STS providers could obtain private line services for non-resale use.⁵⁵ Cincinnati Bell's tariff does not address the resale of private line services issue. Neither do the briefs of ShareTech and ITS.

In view of the lack of record concerning the ramifications associated with the resale of private line services in an STS

⁵⁴ Transcript of Evidence ("T.E."), Volume 1, page 83 and passim.

⁵⁵ General Subscriber Services Tariff, Section A27, page 2 (paragraph A27.1.1.E). Also, Prefiled Testimony of Joan D. Mezzell, page 8, and T.E., pages 88-89.

environment, in the opinion of the Commission resale of private line services through STS providers should not be allowed.

Private Interconnection

South Central Bell's proposed STS tariff states that:

Private interconnection of resale service areas within an exchange local calling area and LATA is prohibited. Tie Lines are restricted to the private use of a single resale client and cannot be used to access Local Exchange Service via Sharing and Resale trunks or lines. The resellers communication switch may not be connected via private lines to other communication systems which subscribe to flat rate exchange service.⁵⁶

Cincinnati Bell's tariff does not address private or tie line interconnection. Neither do the briefs of ShareTech or ITS address the issue.

The prohibition on the private interconnection of STS premises within an exchange local calling area and LATA is clearly designed to inhibit local and toll bypass. Although such a prohibition is likely to prove difficult to enforce, the Commission concurs with Ms. Mezzell that such interconnection would involve an "STS tying together his systems so that essentially they were making a general communications offering, rather than [an offering] restricted to a specific area,"⁵⁷ which could constitute a violation of franchise rights. Therefore, in the opinion of the Commission, a tariff prohibition on the private interconnection of STS premises should be allowed.

⁵⁶ General Subscriber Services Tariff, Section A27, page 2 (paragraph A27.1.1.F). The underlined text indicates language that should be deleted from the tariff.

⁵⁷ T.E., pages 91-92.

Although South Central Bell's tariff would prohibit private interconnection of STS premises, the tariff permits STS clients the use of private line services, including tie line service. This would allow an STS client to interconnect a number of locations within an exchange or LATA. However, use of tie lines to access local exchange service through the STS provider would be prohibited. Again, although such a prohibition is likely to prove difficult to enforce, it is clearly designed to inhibit local and toll bypass. Therefore, in the opinion of the Commission, a tariff prohibition on the use of tie lines to access local exchange service through an STS provider should be allowed.

As indicated above, resale of private line services through STS providers will not be allowed at this time. However, as is also indicated, South Central Bell's tariff is unclear as to whether an STS provider can obtain private line services for non-resale use. The Commission interprets the last sentence of the tariff provision under discussion to suggest that such an option would be available. The Commission finds no substantial difference between the private interconnection of STS premises and the interconnection of STS premises through private line services offered by LECs. Therefore, in the opinion of the Commission, interconnection of STS premises through private line services should not be allowed.

Business Service Classification

Both South Central Bell's and Cincinnati Bell's proposed STS tariffs require that STS be classified as business service.

In the opinion of the Commission, STS should be classified as business service, irrespective of the particular use associated with the STS premises.

Client Charges and Directory Listings

South Central Bell's proposed STS tariff states that:

The client of the reseller is defined as a different business, firm, corporation, company, subsidiary, association, associate, agent or a residence. A monthly client charge shown in A27.1.3(a) applies for each client of the reseller, except for Federal, State and Local Government, Telephone Answering Service, and Radio Common Carriers. One directory listing for each client of the reseller will be provided in the alphabetical section of the directory at no extra charge. Other listings may be obtained under the conditions and rates specified in Section A6., Directory Listings Tariff. Client listing charges will not be separately billed.⁵⁸

Cincinnati Bell's tariff does not include client charges. However, unlike South Central Bell's tariff, Cincinnati Bell's tariff will provide STS clients directory listings only at rates specified for additional directory listings.⁵⁹

Both ShareTech and ITS object to South Central Bell's client charge based on a general lack of justification.⁶⁰

Under cross-examination, Ms. Mezzell indicated that South Central Bell's client charge was not cost based. Instead, it is South Central Bell's existing joint user charge applied to STS

⁵⁸ General Subscriber Services Tariff, Section A27, page 2 (paragraph A27.1.2.B). The underlined text indicates language that should be deleted from the tariff.

⁵⁹ General Exchange Tariff, Section 2, page 6 (paragraph C.1.b.3).

⁶⁰ ShareTech Brief, pages 6-7, and ITS Brief, pages 4-5.

clients.⁶¹ In effect, in this scenario, STS providers as well as STS clients would be charged local access line rates.

In the opinion of the Commission, in addition to a lack of cost support, South Central Bell's client charge amounts to a surcharge that would be imposed on STS clients who are not themselves customers of South Central Bell and, therefore, the charge should not be allowed.⁶²

On the issue of directory listings, ShareTech and ITS share the position that alphabetical or white pages directory listings should be provided to each STS client, that any additional listings should be obtained under applicable rates for additional listings, and that the STS provider should be billed for any applicable directory listings charges.⁶³

Consistent with South Central Bell's tariff and the positions of ShareTech and ITS, in the opinion of the Commission, each STS client should be provided an alphabetical or white pages directory listing at no charge and other listings should be obtained at applicable additional listings charges. Also, consistent with the concept of the STS provider as the sole point of contact with the LECs, all applicable directory listings charges should be billed to the STS provider.

⁶¹ T.E., pages 40-42.

⁶² As an added observation, allowing an STS client charge would be tantamount to allowing a surcharge applied to the customers of WATS resellers for the reason that such customers choose to obtain toll service through a reseller rather than through South Central Bell's WATS or MTS tariffs.

⁶³ ShareTech Brief, pages 18-19, and ITS Brief, pages 10-11.

Service Establishment Charges

South Central Bell's proposed STS tariff includes a service establishment charge that would apply in addition to all other applicable recurring and nonrecurring charges.⁶⁴ South Central Bell did not file any cost analysis to support the service establishment charge.

Cincinnati Bell's tariff does not include a service establishment charge.

The issue of a service establishment charge has not been addressed in the record through testimony or briefs. Presumably, as is typical in the case with other tariffs, the service establishment charge is designed to recover extraordinary expenses that might be expected to occur in reviewing STS applications for service. Such expenses, incremental to ordinarily applicable service charges could occur, especially in the case of complex STS applications. Therefore, the Commission will allow STS service establishment charges. These charges should be based either on an actual or a reasonable estimation of incremental cost.

Minimum Service Periods

South Central Bell's proposed STS tariff includes minimum service period and termination liability provisions:

The minimum period of service is 36 months with a Service Cancellation Fee (SCF) applicable at the date of termination based on the exchange rates in effect. The Service Cancellation Fee is reduced 1/36 per month and will be an amount equal to the

⁶⁴ General Subscriber Services Tariff, Section A27, page 2 (paragraph A27.1.2.C).

exchange rates for the maximum number of lines subscribed to during the service period. A nine month notice is required prior to termination of service by the reseller. If a nine month notice is not received, the reseller is liable for 50 percent of the expenditures to provide the additional facilities required to serve the subscribers previously served in the resale area.⁶⁵

Cincinnati Bell's tariff does not include either a minimum service period or termination liability provisions.

The briefs of ShareTech and ITS do address the issues of a minimum period or termination liability.

Historically, a number of PBX and PBX-like services (ESSX and Centrex) have been offered conditional on minimum service periods and termination liabilities. Such tariff provisions have been allowed to provide LECs a level of certainty concerning network investment decisions related to complex service offerings and to minimize potential stranded investment, at least in the short term. From the record in this case, it appears that STS has the potential to both cause major investment decisions on the part of LECs and also the potential to cause substantial stranded investment.⁶⁶ Therefore, in the opinion of the Commission, minimum service periods and termination liabilities should be allowed in STS tariffs, in order to maximize certainty in network planning and minimize stranded investment.

⁶⁵ General Subscriber Services Tariff, Section A27, page 3 (paragraph A27.1.2.E). The underlined text indicates language that should be deleted from the tariff.

⁶⁶ Prefiled Testimony of Joan D. Mezzell, pages 10 and 12-13, and Prefiled Testimony of Steven L. Kritzer, pages 7-8.

In addition to a minimum service period and termination liability, South Central Bell's tariff includes a requirement for 9 months prior notice of termination of service and a liability provision concerning failure to provide 9 months prior notice. Given the characteristics of an STS arrangement, in the opinion of the Commission, reasonable prior notice should be required in order to allow an LEC reasonable time to provide individual service where collective service had been provided, but penalties for failure to provide reasonable notice should not be a matter of tariff specification. The pursuit of damages by an LEC or STS client for failure to provide reasonable notice under tariff, contract, or service agreement is a civil matter more appropriately left to the courts.

Direct Access

South Central Bell's proposed STS tariff requires that an STS provider permit direct access to local exchange service. Specifically:

Customers who choose to obtain service directly from the Company may subscribe to any local exchange service available. If a customer does business with both the reseller and the Company, measured service will be required.⁶⁷

In addition, South Central Bell's tariff requires that either in the case of direct access or STS-provided COCOT the STS provider "make either cable pairs or their equivalents available,

⁶⁷ General Subscriber Services Tariff, Section A27, page 1 (paragraph A27.1.1.B). The underlined text indicates language that should be deleted from the tariff.

or provide facility support (conduit or poles) to the Company at no charge for provision of these services."⁶⁸

Although Cincinnati Bell's tariff does not address the issue of direct access, its position is the same as South Central Bell's, at least on the issue of direct access.⁶⁹

Neither ShareTech's nor ITS' briefs address the issue of direct access. However, ITS' initial comments in this case indicate that direct access should be allowed and that the STS provider should be compensated for the use of any direct access facilities, but is silent as to whether the entity obtaining direct access or the LEC should provide the compensation.⁷⁰

In the opinion of the Commission, direct access should be allowed, which, as ITS indicates, "would be consistent with the competitive provision of STS."⁷¹ Furthermore, in the opinion of the Commission, the STS provider should make direct access facilities available to LECs at no charge to LECs. In general, LECs should be responsible only for local exchange facilities up to and including the most economic point of network interface with an STS arrangement. Facilities located on the STS side of an STS arrangement should be the responsibility of the STS provider. Adequate compensation for use of direct access facilities on the STS side of an STS arrangement should be a

⁶⁸ Ibid., page 3 (paragraph A27.1.2.G).

⁶⁹ Prefiled Testimony of Steven L. Kritzer, page 7.

⁷⁰ Initial Comments of ITS, page 12.

⁷¹ Ibid.

matter of negotiation between the STS provider and the entity obtaining direct access, and should be included in service contracts between an STS provider and its clients. As indicated elsewhere, the Commission's complaint review process will serve to monitor unreasonable demands for such compensation on the part of STS providers.

As discussed elsewhere in this Order, the Commission will not allow an extension of measured rate service to STS arrangements, including the case where an entity obtains direct access.

Network Interface

South Central Bell's proposed STS tariff states the following on the matter of network interface:

The Company will provide facilities to the first point (demarcation/network interface) inside the reseller's premises which, in the judgement of the Company, is suitable for the location of a network interface. The most economical route from existing network distribution facilities will generally determine the approach used in establishing the point-of-demarcation. The customer may designate an alternate approach route for entrance facilities at additional charges as specified in Section A5. of this tariff. The Company will extend the point-of-demarcation to any point designated by the reseller inside his premises at the charges specified in Section A4. of this tariff. Route selection and location of point-of-demarcation must be in compliance with regulations set forth in other sections of this tariff and F.C.C. Part 68.⁷²

Cincinnati Bell's tariff does not address the matter of network interface. Neither do the briefs of ShareTech or ITS.

⁷² General Subscriber Services Tariff, Section A27, page 3 (paragraph A27.1.2.G).

South Central Bell's tariff provision concerning network interface is reasonable and generally consistent with requirements and options that apply to other classes of service. Any STS provider who disagrees with South Central Bell's or another LEC's selection of a network interface location may appeal to the Commission through the Commission's complaint review process.

Suspension of Service

South Central Bell's proposed STS tariff would not permit STS providers temporary suspensions of service.⁷³ Temporary suspension of service is an arrangement whereby a subscriber may discontinue service for a period of time without terminating service.

Cincinnati Bell's tariff does not address the issue of suspension of service. Neither do the briefs of ShareTech and ITS.

In the opinion of the Commission, a prohibition of temporary suspensions of service is reasonable and should be permitted.

Elimination of Joint User Service

Both South Central Bell's⁷⁴ and Cincinnati Bell's⁷⁵ proposed STS tariffs "grandfather" existing joint user service.

Neither ShareTech nor ITS have commented on the elimination of joint user service.

⁷³ Ibid. (paragraph A27.1.2.I).

⁷⁴ Ibid., Section A3, pages 4-6.1, and Section A100, pages 394-397.

⁷⁵ General Exchange Tariff, Section 12.

As indicated elsewhere in this Order, South Central Bell's and Cincinnati Bell's STS tariffs are designed to replace and allow an enhanced form of joint user service. To maintain existing joint user tariffs while requiring LECs to file STS tariffs would, in effect, result in unnecessary duplication of service offerings. Therefore, in the opinion of the Commission, existing joint user tariffs should be "grandfathered" simultaneously with the filing of STS tariffs.

COCOT Tariffs

As indicated elsewhere in this Order, COCOT tariffs were approved in other cases, subject to change pending the outcome of this case.

To date, South Central Bell,⁷⁶ Cincinnati Bell,⁷⁷ and General⁷⁸ have filed COCOT tariffs. No substantial objections have been raised regarding the terms and conditions of service in these tariffs. South Central Bell's and General's COCOT tariffs are similar in structure and address the terms and conditions of COCOT service more thoroughly than does Cincinnati Bell's COCOT tariff. Therefore, these should serve as models for other LECs filing COCOT tariffs.

Coin-Tel is the only intervenor in this case whose primary interest is COCOT and its major objection to existing COCOT tariffs centers on measured rate service as required in South

⁷⁶ General Subscriber Services Tariff, Section A7, pages 7-12.

⁷⁷ General Exchange Tariff, Section 16, pages 2.1-2.2 and 5.

⁷⁸ General Customer Services Tariff, Section S7, pages 4-8.

Central Bell's and Cincinnati Bell's COCOT tariffs.⁷⁹ General's COCOT tariff is message rate based.⁸⁰

Consistent with decisions elsewhere in this Order concerning STS rates, in the opinion of the Commission, measured rate service should not apply to COCOT providers, pending the outcome of Administrative Case No. 285. Instead, COCOT providers should have the option of flat rate or message rate service at rates applicable to the serving exchange, pending the outcome of Administrative Case No. 285.

STS CERTIFICATION AND QUALITY OF SERVICE

The Commission, in considering the requirements and degree of regulation applicable for an STS provider, finds that any requirement of 807 KAR 5:006, 5:011, 5:061 and 5:064, not specifically addressed herein, is waived as a requirement for STS providers, subject to continual monitoring and possible revisions in the future to assure adequate, reliable, and reasonable service to STS customers.

STS Certification

Pursuant to the Commission's Rules of Procedure, a utility must obtain a certificate of public convenience and necessity for the construction or extension of any plant, equipment, property

⁷⁹ In the case of South Central Bell, "fixed usage equivalent" rates apply where measured rate service is not available. In the case of Cincinnati Bell, message rates apply where measured rate service is not available. Also, where neither measured rate service nor message service is available, Kentucky Metropolitan Exchange measured rates apply.

⁸⁰ Flat rates apply where message rate service is not available.

or facility. An STS provider, having been deemed a utility, must therefore obtain such a certificate from this Commission.

In addition to complying with 807 KAR 5:001 pertaining to applications, the STS Provider (the applicant) shall submit the following data:

(a) The name, address and telephone number of the owner, manager, and party responsible for operating the proposed STS offering.

(b) Narrative describing the general and enhanced services to be offered to the customers of the proposed STS arrangement.

(c) An estimate of the initial number of LEC trunks to be used and tenant connections expected to be provided by the applicant.

(d) Layout maps clearly defining the proposed geographic resale area and anticipated plan in terms of new or existing buildings to be included in this resale area. Indicate the location of all public rights of way and thoroughfares within the immediate vicinity.

STS Quality of Service

The Commission is of the opinion that in most cases the unique nature of an STS offering will in itself provide sufficient incentive for an STS provider to maintain a high quality of service.

The STS provider shall, however, be subject to satisfying the "Basic Utility Obligation" as outlined in 807 KAR 5:061, Section 5, (2), (3) and (4).

Annual Reports

STS providers will be required to file on an annual basis a gross operating report covering only the STS operations, the number of customers being served and the location of the STS provider's investment in Kentucky. Additionally the STS provider will file the number of trunks being used and the number of subscriber connections.

The financial records need not be maintained in accordance with the system of accounts prescribed by this Commission, but must be maintained in accordance with generally accepted accounting principles.

Customer Deposits

Any STS provider which requires a separate customer deposit for STS service and/or advance payment for service is required to place these funds in an interest-bearing escrow account until the deposit is refunded or, if applicable, service billed in advance has been rendered. The STS provider shall issue a written receipt of deposit to each customer from whom a deposit and/or advance payment is required showing the name of the customer, date and amount of deposit and/or advance payment and if applicable the time period the advance payment covers.

Discontinuance of Service

STS providers will be allowed to discontinue service after reasonable notice to its customers, the Commission and the LEC which would have provided service absent STS' offering. This notice should assure a smooth transition between STS and alternative LEC service.

Findings

After examining the evidence of record and being advised, the Commission is of the opinion and finds that:

1. STS providers should be classified as public utilities.

2. LECs should be provided access to any and all tenants within an STS facility.

3. Provision of STS service should not violate local franchise rights of LECs.

4. LECs should have carrier of last resort obligations within their franchised territories.

5. STS providers should be classified as non-dominant carriers.

6. All LECs should file an STS tariff.

7. All LECs should file a COCOT tariff.

8. LMS rate structure for COCOT tariffs should be rejected.

9. South Central Bell, Cincinnati Bell, and General should file revised COCOT service tariffs conforming with the terms and conditions of this Order within 30 days from the date of this Order.

10. LMS rate structure for STS tariffs should be rejected.

11. Limitations of liability for directory errors and omissions in STS and COCOT tariffs should not be allowed.

12. STS providers should be responsible for applicable LEC rates and charges, repairs and rearrangements behind and

including the STS switch, and should be the customer of record and sole point of contact with the serving LEC.

13. STS and COCOT should be allowed subject to available facilities in an LEC's serving area.

14. STS premises should be defined as continuous property under common ownership or management that is not separated by property owned or managed by others.

15. Resale of private line services through STS providers should not be allowed.

16. Private interconnection of STS premises should not be allowed.

17. STS tenants should not be allowed to use private line services, including tie line service, to access local exchange service through an STS switch.

18. Interconnection of STS premises through private line services should not be allowed.

19. STS and COCOT service should be classified as business service.

20. Client charges should not be allowed.

21. Service establishment charges should be allowed.

22. Minimum service periods and termination liabilities in the case of STS should be allowed.

23. Direct access to the STS customer by the LEC should be allowed.

24. Temporary suspension of service in the case of STS should not be allowed.

25. The record is inadequate for declaring COCOTs as public utilities.

26. STS providers, having been deemed a public utility, must obtain a certificate of public convenience and necessity to construct and operate STS facilities.

27. In addition to satisfying those requirements for a certificate of public convenience and necessity as outlined in 807 KAR 5:001, the STS provider must also submit the additional information pertaining to STS certification as set forth in this Order.

28. The STS provider should be subject to satisfying the "Basic Utility Obligation" as outlined in 807 KAR 5:061, Section 5(2), (3) and (4).

29. Any requirement of 807 KAR 5:006, 5:011, 5:061 and 5:064, not specifically addressed in this Order, is waived as a requirement for STS providers, subject to continual monitoring and possible revision if necessary to assure adequate, reliable and reasonable service to STS customers.

ORDERS

IT IS THEREFORE ORDERED that:

1. STS providers be and they hereby are classified as public utilities.

2. LECs shall have access to any and all tenants within an STS facility.

3. LECs shall have carrier of last resort obligations within their franchised territories.

4. STS providers shall be classified for regulatory purposes as non-dominant carriers.

5. All LECs shall file an STS tariff within 90 days of the date of this Order.

6. All LECs shall file a COCOT tariff within 90 days of the date of this Order.

7. Local Measured Service rates for COCOT service are rejected pending outcome of Administrative Case No. 285.

8. South Central Bell, Cincinnati Bell, and General shall file revised COCOT service tariffs conforming with the terms and conditions of this Order within 30 days of the date of this Order.

9. Local Measured Service rates for STS service are rejected pending outcome of Administrative Case No. 285.

10. Limitations of liability for directory errors and omissions in STS and COCOT tariffs shall not be allowed.

11. STS providers shall be responsible for applicable LEC rates and charges, repairs and maintenance behind and including the STS switch, and shall be the customer of record and sole point of contact with the serving LEC.

12. STS and COCOT shall be allowed subject to available facilities in an LEC's serving area.

13. STS premises shall be defined as continuous property under common ownership or management that is not separated by property owned or managed by others.

14. Resale of private line services through STS providers shall not be allowed.

15. Private interconnection of STS premises shall not be allowed.

16. STS tenants shall not be allowed to use private line services, including tie line service, to access local exchange service through an STS provider.

17. Interconnection of STS premises through private line services shall not be allowed.

18. STS and COCOT service shall be classified as business service.

19. Client charges shall not be allowed.

20. Service establishment charges shall be allowed.

21. Minimum service periods and termination liabilities in the case of STS shall be allowed.

22. Direct access to the STS customer by the LEC shall be allowed.

23. Temporary suspension of service in the case of STS shall not be allowed.

24. An STS provider must obtain a certificate of public convenience and necessity from this Commission to construct and operate its facilities.

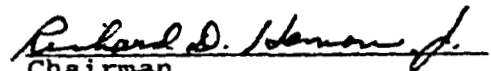
25. In addition to meeting the requirements for a certificate as outlined in 807 KAR 5:001, an STS provider shall submit that additional information required for STS certification as set forth in this Order.

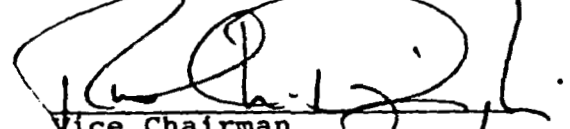
26. The STS provider shall satisfy the "Basic Utility Obligation," 807 KAR 5:061, Section 5(2), (3) and (4), in operating its facility.

27. Any requirement of 807 KAR 5:006, 5:011, 5:061 and 5:064, not specifically addressed in this Order, is waived as a requirement for STS providers, subject to continual monitoring and possible revision if necessary to assure adequate, reliable and reasonable service to STS customers.

Done at Frankfort, Kentucky, this 16th day of April, 1986.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary